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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/634,087	08/08/2000	Phillip M. Braun	00216-489001	4905

26161 7590 06/24/2003

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BOSTON, MA 02110

EXAMINER

SPISICH, MARK

ART UNIT	PAPER NUMBER
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1744

DATE MAILED: 06/24/2003

124

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/634,087

Applicant(s)

BRAUN ET AL.

Examiner

Mark Spisich

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) 4,5,18-20,24-39,41 and 42 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,6-17,21-23 and 40 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5,6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Election/Restrictions*

1. Applicant's election without traverse of the invention of group I and the species of Fig 1 in Paper Nos. 11 and 12 is acknowledged.
2. Claims 4,5,18-20,24-<sup>37</sup>29,41 and 42 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper Nos. 11 and 13. The claim listing that applicant provided in paper #13 (1-**22,17,23** and 40) (emphasis added) does not make any sense. Claims 4 and 5 appear to be drawn to the embodiment of fig 2 and have also been withdrawn (pending the allowance of a generic claim).

### *Claim Rejections - 35 USC § 112*

3. Claims 6-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. "Tips" (claims 6-8, line 1) lacks antecedent.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-3,6,17,22 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Thomas et al (USP 2,246,867). The patent to Thomas discloses an oral

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care device comprising a head (10) as well as a rocking element (16) having a plurality of protrusions (17) radially extending from a central portion thereof. The phrase "shaped to..." (claims 6 and 40) does not define any structure. The rocking element does include an "opening" (15) (claim 17) and pin (18) reads on the recited mounting element (claim 22).

6. Claims 1-3,6,22,23 and 40 are rejected under 35 U.S.C. 102(b) as being anticipated by Birch (USP 3,230,562). The patent to Birch discloses an oral care device (10) comprising a head (14) and a rocking element including a central portion (18) and a plurality of radially extending protrusions (20) which are tapered toward the free ends thereof. The elements (18,20) of Birch (as are the ones of the present application) are made of an elastomeric material (rubber) and are perfectly capable of rocking and the device is used. Birch also teaches that the element(s) may be mounted to the head with a mounting element (32) as in claim 22.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Birch (USP 3,230,562) in view of UK 2,214,420. The patent to Birch discloses the invention substantially as claimed with the exception of the element being co-molded with the head. '420 teaches the co-molding of an elastomeric tooth contacting medium (5) with

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the head (2). It would have been obvious to one of ordinary skill to have modified the device of Birch as such so as to produce a more permanent connection between the two.

9. Claims 7-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Birch (USP 3,230,562). The patent to Birch discloses a similar material (rubber) to that disclosed in the present application as well protrusions having the recited taper, etc. The particular dimensions and durometer reading of the noted claims would be obvious to one of ordinary skill to suit the particular user.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patent to Pounder et al is pertinent to massaging element with a plurality of protrusions and the patent to West to a further patent which combines bristles with a "rocking" element.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark Spisich whose telephone number is (703) 308-1271. The examiner can normally be reached on M-Th (6-3:30), Alternate Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert J Warden can be reached on (703) 308-2920. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

A handwritten signature in black ink, appearing to read "Mark Spisich", with a long horizontal flourish extending to the right.

Mark Spisich  
Primary Examiner  
Art Unit 1744

MS  
June 19, 2003